

Introduced by Senator Ashburn

February 18, 2005

An act to amend ~~Section 707~~ Sections 654.3, 707, and 791 of the Welfare and Institutions Code, relating to juvenile crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 520, as amended, Ashburn. Juvenile crime: fitness hearings.

(1) Existing law, enacted by initiative statute, generally excludes certain minors who have been alleged to have engaged in certain crimes, including, among others, specified violent crimes, controlled substance-related crimes, and criminal street gang crimes, from eligibility for specified supervision programs conducted within the jurisdiction of the juvenile court. The initiative statute provides that any amendment of its provisions requires a 2/3 vote of the membership of each house of the Legislature.

This bill would prohibit minors who have been alleged to have committed a felony sexual assault, as defined, from being eligible for supervision programs.

(2) Existing law establishes the criteria by which the juvenile court may find that specified minors, including a person who has committed one of specified violent offenses when he or she was 16 years of age or older, 2 or more felony offenses under certain circumstances, or specified violent offenses at 14 years of age or older, are unfit for treatment in juvenile court.

This bill would lower the age at which certain persons are to be deemed unfit for treatment in juvenile court from 16 to 14 years of age or older for various violent crimes including, among others, murder, arson, robbery, rape, sodomy, lewd and lascivious acts, oral copulation, kidnapping, attempted murder, and specified assaults. The

bill would also make technical, nonsubstantive changes to those provisions.

(3) *Existing juvenile law, enacted by initiative statute, provides that if a minor consents and waives his or her right to a speedy jurisdictional hearing, the court may refer the case to the probation department or summarily grant deferred entry of judgment if the minor admits the charges in the petition and waives time for the pronouncement of the judgment. Existing law further specifies that when directed by the court, the probation department is required to make an investigation and take into consideration various factors, including any other mitigating and aggravating factors in determining whether the minor is a person who would be benefited by education, treatment, or rehabilitation.*

This bill would specify that mitigating and aggravating factors, as used in those provisions, include factors relating to the offense. Because the bill would amend an initiative statute, it would require a 2/3 vote.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 654.3 of the Welfare and Institutions
2 Code is amended to read:

3 654.3. No minor shall be eligible for the program of
4 supervision set forth in Section 654 or 654.2 in the following
5 cases, except in an unusual case where the interests of justice
6 would best be served and the court specifies on the record the
7 reasons for its decision:

8 (a) A petition alleges that the minor has violated an offense
9 listed in subdivision (b) of Section 707.

10 (b) A petition alleges that the minor has sold or possessed for
11 sale a controlled substance as defined in Chapter 2 (commencing
12 with Section 11053) of Division 10 of the Health and Safety
13 Code.

14 (c) A petition alleges that the minor has violated Section
15 11350 or 11377 of the Health and Safety Code where the
16 violation takes place at a public or private elementary,
17 vocational, junior high school, or high school, or a violation of
18 Section 245.5, 626.9, or 626.10 of the Penal Code.

(d) A petition alleges that the minor has violated Section 186.22 of the Penal Code.

(e) A petition alleges that the minor has committed a felony sexual assault listed in subdivision (a) of Section 11165.1 of the Penal Code.

~~(e)~~

(f) The minor has previously participated in a program of supervision pursuant to Section 654.

~~(f)~~

(g) The minor has previously been adjudged a ward of the court pursuant to Section 602.

~~(g)~~

(h) A petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000). For purposes of this subdivision, the definition of “victim” in paragraph (1) of subdivision (a) of Section 730.6 and “restitution” in subdivision (h) of Section 730.6 shall apply.

~~(h)~~

(i) The minor is alleged to have committed a felony offense when the minor was at least 14 years of age. Except in unusual cases where the court determines the interest of justice would best be served by a proceeding pursuant to Section 654 or 654.2, a petition alleging that a minor who is 14 years of age or over has committed a felony offense shall proceed under Article 20.5 (commencing with Section 790) or Article 17 (commencing with Section 675).

SECTION 1.

SEC. 2. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which the minor is alleged to be a person described in subdivision (a) of Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not

1 a fit and proper subject to be dealt with under the juvenile court
2 law if it concludes that the minor would not be amenable to the
3 care, treatment, and training program available through the
4 facilities of the juvenile court, based upon an evaluation of the
5 following criteria:

6 (1) The degree of criminal sophistication exhibited by the
7 minor.

8 (2) Whether the minor can be rehabilitated prior to the
9 expiration of the juvenile court's jurisdiction.

10 (3) The minor's previous delinquent history.

11 (4) Success of previous attempts by the juvenile court to
12 rehabilitate the minor.

13 (5) The circumstances and gravity of the offense alleged in the
14 petition to have been committed by the minor.

15 A determination that the minor is not a fit and proper subject to
16 be dealt with under the juvenile court law may be based on any
17 one or a combination of the factors set forth above, which shall
18 be recited in the order of unfitness. In any case in which a
19 hearing has been noticed pursuant to this section, the court shall
20 postpone the taking of a plea to the petition until the conclusion
21 of the fitness hearing, and no plea which may already have been
22 entered shall constitute evidence at the hearing.

23 (2) This paragraph shall apply to a minor alleged to be a
24 person described in Section 602 by reason of the violation, when
25 he or she has attained the age of 16 years, of any felony offense
26 when the minor has been declared to be a ward of the court
27 pursuant to Section 602 on one or more prior occasions if both of
28 the following apply:

29 (A) The minor has previously been found to have committed
30 two or more felony offenses.

31 (B) The offenses upon which the prior petition or petitions
32 were based were committed when the minor had attained the age
33 of 14 years.

34 Upon motion of the petitioner made prior to the attachment of
35 jeopardy the court shall cause the probation officer to investigate
36 and submit a report on the behavioral patterns and social history
37 of the minor being considered for a determination of unfitness.
38 Following submission and consideration of the report, and of any
39 other relevant evidence that the petitioner or the minor may wish
40 to submit, the minor shall be presumed to be not a fit and proper

1 subject to be dealt with under the juvenile court law unless the
2 juvenile court concludes, based upon evidence, which evidence
3 may be of extenuating or mitigating circumstances that the minor
4 would be amenable to the care, treatment, and training program
5 available through the facilities of the juvenile court, based upon
6 an evaluation of the following criteria:

7 (A) The degree of criminal sophistication exhibited by the
8 minor.

9 (B) Whether the minor can be rehabilitated prior to the
10 expiration of the juvenile court's jurisdiction.

11 (C) The minor's previous delinquent history.

12 (D) Success of previous attempts by the juvenile court to
13 rehabilitate the minor.

14 (E) The circumstances and gravity of the offense alleged in the
15 petition to have been committed by the minor.

16 A determination that the minor is a fit and proper subject to be
17 dealt with under the juvenile court law shall be based on a
18 finding of amenability after consideration of the criteria set forth
19 above, and findings therefor recited in the order as to each of the
20 above criteria that the minor is fit and proper under each ~~and~~
21 ~~every~~ one of the above criteria. In making a finding of fitness, the
22 court may consider extenuating and mitigating circumstances in
23 evaluating each of the above criteria. In any case in which the
24 hearing has been noticed pursuant to this section, the court shall
25 postpone the taking of a plea to the petition until the conclusion
26 of the fitness hearing and no plea ~~which~~ *that* may already have
27 been entered shall constitute evidence at the hearing. If the minor
28 is found to be a fit and proper subject to be dealt with under the
29 juvenile court law pursuant to this subdivision, the minor shall be
30 committed to placement in a juvenile hall, ranch camp, forestry
31 camp, boot camp, or secure juvenile home pursuant to Section
32 730, or in any institution operated by the Youth Authority.

33 (3) If, pursuant to this subdivision, the minor is found to be not
34 a fit and proper subject for juvenile court treatment and is tried in
35 a court of criminal jurisdiction and found guilty by the trier of
36 fact, the judge may commit the minor to the Youth Authority in
37 lieu of sentencing the minor to the state prison, unless the
38 limitations specified in Section 1732.6 apply.

39 (b) Subdivision (c) shall be applicable in any case in which a
40 minor is alleged to be a person described in Section 602 by

- 1 reason of the violation, when he or she was ~~16~~ 14 years of age or
2 older, of one of the following offenses:
- 3 (1) Murder.
 - 4 (2) Arson, as provided in subdivision (a) or (b) of Section 451
5 of the Penal Code.
 - 6 (3) Robbery.
 - 7 (4) Rape with force or violence or threat of great bodily harm.
 - 8 (5) Sodomy by force, violence, duress, menace, or threat of
9 great bodily harm.
 - 10 (6) Lewd or lascivious act as provided in subdivision (b) of
11 Section 288 of the Penal Code.
 - 12 (7) Oral copulation by force, violence, duress, menace, or
13 threat of great bodily harm.
 - 14 (8) Any offense specified in subdivision (a) of Section 289 of
15 the Penal Code.
 - 16 (9) Kidnapping for ransom.
 - 17 (10) Kidnapping for purpose of robbery.
 - 18 (11) Kidnapping with bodily harm.
 - 19 (12) Attempted murder.
 - 20 (13) Assault with a firearm or destructive device.
 - 21 (14) Assault by any means of force likely to produce great
22 bodily injury.
 - 23 (15) Discharge of a firearm into an inhabited or occupied
24 building.
 - 25 (16) Any offense described in Section 1203.09 of the Penal
26 Code.
 - 27 (17) Any offense described in Section 12022.5 or 12022.53 of
28 the Penal Code.
 - 29 (18) Any felony offense in which the minor personally used a
30 weapon listed in subdivision (a) of Section 12020 of the Penal
31 Code.
 - 32 (19) Any felony offense described in Section 136.1 or 137 of
33 the Penal Code.
 - 34 (20) Manufacturing, compounding, or selling one-half ounce
35 or more of any salt or solution of a controlled substance specified
36 in subdivision (e) of Section 11055 of the Health and Safety
37 Code.
 - 38 (21) Any violent felony, as defined in subdivision (c) of
39 Section 667.5 of the Penal Code, which would also constitute a

felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(27) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(29) The offense described in Section 12308 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

1 (1) The degree of criminal sophistication exhibited by the
2 minor.

3 (2) Whether the minor can be rehabilitated prior to the
4 expiration of the juvenile court's jurisdiction.

5 (3) The minor's previous delinquent history.

6 (4) Success of previous attempts by the juvenile court to
7 rehabilitate the minor.

8 (5) The circumstances and gravity of the offenses alleged in
9 the petition to have been committed by the minor.

10 A determination that the minor is a fit and proper subject to be
11 dealt with under the juvenile court law shall be based on a
12 finding of amenability after consideration of the criteria set forth
13 above, and findings therefor recited in the order as to each of the
14 above criteria that the minor is fit and proper under each and
15 every one of the above criteria. In making a finding of fitness, the
16 court may consider extenuating or mitigating circumstances in
17 evaluating each of the above criteria. In any case in which a
18 hearing has been noticed pursuant to this section, the court shall
19 postpone the taking of a plea to the petition until the conclusion
20 of the fitness hearing and no plea which may already have been
21 entered shall constitute evidence at the hearing. If, pursuant to
22 this subdivision, the minor is found to be not a fit and proper
23 subject for juvenile court treatment and is tried in a court of
24 criminal jurisdiction and found guilty by the trier of fact, the
25 judge may commit the minor to the Youth Authority in lieu of
26 sentencing the minor to the state prison, unless the limitations
27 specified in Section 1732.6 apply.

28 (d) (1) Except as provided in subdivision (b) of Section 602,
29 the district attorney or other appropriate prosecuting officer may
30 file an accusatory pleading in a court of criminal jurisdiction
31 against any minor 16 years of age or older who is accused of
32 committing an offense enumerated in subdivision (b).

33 (2) Except as provided in subdivision (b) of Section 602, the
34 district attorney or other appropriate prosecuting officer may file
35 an accusatory pleading against a minor 14 years of age or older
36 in a court of criminal jurisdiction in any case in which any one or
37 more of the following circumstances apply:

38 (A) The minor is alleged to have committed an offense which
39 if committed by an adult would be punishable by death or
40 imprisonment in the state prison for life.

1 (B) The minor is alleged to have personally used a firearm
2 during the commission or attempted commission of a felony, as
3 described in Section 12022.5 of the Penal Code.

4 (C) The minor is alleged to have committed an offense listed
5 in subdivision (b) in which any one or more of the following
6 circumstances apply:

7 (i) The minor has previously been found to be a person
8 described in Section 602 by reason of the commission of an
9 offense listed in subdivision (b).

10 (ii) The offense was committed for the benefit of, at the
11 direction of, or in association with any criminal street gang, as
12 defined in subdivision (f) of Section 186.22 of the Penal Code,
13 with the specific intent to promote, further, or assist in any
14 criminal conduct by gang members.

15 (iii) The offense was committed for the purpose of
16 intimidating or interfering with any other person's free exercise
17 or enjoyment of any right secured to him or her by the
18 Constitution or laws of this state or by the Constitution or laws of
19 the United States and because of the other person's race, color,
20 religion, ancestry, national origin, disability, gender, or sexual
21 orientation, or because the minor perceives that the other person
22 has one or more of those characteristics, as described in Title
23 11.6 (commencing with Section 422.6) of Part 1 of the Penal
24 Code.

25 (iv) The victim of the offense was 65 years of age or older, or
26 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
27 or confined to a wheelchair, and that disability was known or
28 reasonably should have been known to the minor at the time of
29 the commission of the offense.

30 (3) Except as provided in subdivision (b) of Section 602, the
31 district attorney or other appropriate prosecuting officer may file
32 an accusatory pleading in a court of criminal jurisdiction against
33 any minor 16 years of age or older who is accused of committing
34 one of the following offenses, if the minor has previously been
35 found to be a person described in Section 602 by reason of the
36 violation of any felony offense, when he or she was 14 years of
37 age or older:

38 (A) Any felony offense in which it is alleged that the victim of
39 the offense was 65 years of age or older, or blind, deaf,
40 quadriplegic, paraplegic, developmentally disabled, or confined

1 to a wheelchair, and that disability was known or reasonably
2 should have been known to the minor at the time of the
3 commission of the offense;

4 (B) Any felony offense committed for the purposes of
5 intimidating or interfering with any other person's free exercise
6 or enjoyment of any right secured to him or her by the
7 Constitution or laws of this state or by the Constitution or laws of
8 the United States and because of the other person's race, color,
9 religion, ancestry, national origin, disability, gender, or sexual
10 orientation, or because the minor perceived that the other person
11 had one or more of those characteristics, as described in Title
12 11.6 (commencing with Section 422.6) of Part 1 of the Penal
13 Code; or

14 (C) The offense was committed for the benefit of, at the
15 direction of, or in association with any criminal street gang as
16 prohibited by Section 186.22 of the Penal Code.

17 (4) In any case in which the district attorney or other
18 appropriate prosecuting officer has filed an accusatory pleading
19 against a minor in a court of criminal jurisdiction pursuant to the
20 provisions of this subdivision, the case shall then proceed
21 according to the laws applicable to a criminal case. In
22 conjunction with the preliminary hearing, as provided for in
23 Section 738 of the Penal Code, the magistrate shall make a
24 finding that reasonable cause exists to believe that the minor
25 comes within the provisions of this subdivision. If reasonable
26 cause is not established, the criminal court shall transfer the case
27 to the juvenile court having jurisdiction over the matter.

28 (5) For any offense for which the prosecutor may file the
29 accusatory pleading in a court of criminal jurisdiction pursuant to
30 this subdivision, but elects instead to file a petition in the juvenile
31 court, if the minor is subsequently found to be a person described
32 in subdivision (a) of Section 602, the minor shall be committed
33 to placement in a juvenile hall, ranch camp, forestry camp, boot
34 camp, or secure juvenile home pursuant to Section 730, or in any
35 institution operated by the Youth Authority.

36 (6) If, pursuant to this subdivision, the minor is found to be not
37 a fit and proper subject for juvenile court treatment and is tried in
38 a court of criminal jurisdiction and found guilty by the trier of
39 fact, the judge may commit the minor to the Youth Authority in

1 lieu of sentencing the minor to the state prison, unless the
2 limitations specified in Section 1732.6 apply.

3 (e) Any report submitted by a probation officer pursuant to
4 this section regarding the behavioral patterns and social history
5 of the minor being considered for a determination of unfitness
6 shall include any written or oral statement offered by the victim,
7 the victim's parent or guardian if the victim is a minor, or if the
8 victim has died, the victim's next of kin, as authorized by
9 subdivision (b) of Section 656.2. Victims' statements shall be
10 considered by the court to the extent they are relevant to the
11 court's determination of unfitness.

12 *SEC. 3. Section 791 of the Welfare and Institutions Code is*
13 *amended to read:*

14 791. (a) The prosecuting attorney's written notification to the
15 minor shall also include all of the following:

16 (1) A full description of the procedures for deferred entry of
17 judgment.

18 (2) A general explanation of the roles and authorities of the
19 probation department, the prosecuting attorney, the program, and
20 the court in that process.

21 (3) A clear statement that, in lieu of jurisdictional and
22 disposition hearings, the court may grant a deferred entry of
23 judgment with respect to any offense charged in the petition,
24 provided that the minor admits each allegation contained in the
25 petition and waives time for the pronouncement of judgment, and
26 that upon the successful completion of the terms of probation, as
27 defined in Section 794, the positive recommendation of the
28 probation department, and the motion of the prosecuting
29 attorney, but no sooner than 12 months and no later than 36
30 months from the date of the minor's referral to the program, the
31 court shall dismiss the charge or charges against the minor.

32 (4) A clear statement that upon any failure of the minor to
33 comply with the terms of probation, including the rules of any
34 program the minor is directed to attend, or any circumstances
35 specified in Section 793, the prosecuting attorney or the
36 probation department, or the court on its own, may make a
37 motion to the court for entry of judgment and the court shall
38 render a finding that the minor is a ward of the court pursuant to
39 Section 602 for the offenses specified in the original petition and
40 shall schedule a dispositional hearing.

1 (5) An explanation of record retention and disposition
2 resulting from participation in the deferred entry of judgment
3 program and the minor's rights relative to answering questions
4 about his or her arrest and deferred entry of judgment following
5 successful completion of the program.

6 (6) A statement that if the minor fails to comply with the terms
7 of the program and judgment is entered, the offense may serve as
8 a basis for a finding of unfitness pursuant to subdivision (d) of
9 Section 707, if the minor commits two subsequent felony
10 offenses.

11 (b) If the minor consents and waives his or her right to a
12 speedy jurisdictional hearing, the court may refer the case to the
13 probation department or the court may summarily grant deferred
14 entry of judgment if the minor admits the charges in the petition
15 and waives time for the pronouncement of judgment. When
16 directed by the court, the probation department shall make an
17 investigation and take into consideration the defendant's age,
18 maturity, educational background, family relationships,
19 demonstrable motivation, treatment history, if any, and other
20 mitigating and aggravating factors, *including factors relating to*
21 *the offense*, in determining whether the minor is a person who
22 would be benefited by education, treatment, or rehabilitation. The
23 probation department shall also determine which programs would
24 accept the minor. The probation department shall report its
25 findings and recommendations to the court. The court shall make
26 the final determination regarding education, treatment, and
27 rehabilitation of the minor.

28 (c) A minor's admission of the charges contained in the
29 petition pursuant to this chapter shall not constitute a finding that
30 a petition has been sustained for any purpose, unless a judgment
31 is entered pursuant to subdivision (b) of Section 793.